

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 5
ON PUBLIC SAFETY
ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR
MONDAY, MARCH 11, 2019
2:30 P.M. – STATE CAPITOL, ROOM 437

ITEMS TO BE HEARD

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ITEMS TO BE HEARD

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

ISSUE 1: FLEET REPLACEMENT

The California Department of Corrections and Rehabilitation (CDCR) will open this issue with an overview of the proposal related to establishing a fleet replacement schedule.

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

CDCR Uses Vehicles for Various Purposes. CDCR owns nearly 7,700 vehicles of varying types (ranging from golf carts to farming equipment) that are used for a variety of purposes, including inmate transportation (both within and outside of prison grounds), fire protection, construction support, and institution perimeter security. CDCR staff and inmate workers generally maintain the vehicles but sometimes send them out for more complex repairs.

Department of General Services (DGS) Sets Vehicle Replacement Thresholds. DGS sets policy for and approves all state vehicle purchases. Specifically, DGS sets replacement thresholds for different types of vehicles that, if met, make a vehicle eligible for replacement. For example, a sedan that either has over 65,000 miles or is older than six years is eligible for replacement. In determining the vehicle replacement thresholds, DGS hired a consultant in 2016 to estimate the age and mileage levels at which it is more cost-effective to replace various types of vehicles rather than repair them, based on actual data on state vehicle price, operational cost, and resale value. By replacing vehicles according to these thresholds, DGS expects that departments would minimize the total costs of the state's vehicle fleet. Currently 5,500 of CDCR's 7,700 vehicles exceed DGS's thresholds for replacement.

CDCR Does Not Have Ongoing Funding Specifically for Vehicle Replacement. CDCR's baseline budget does not include ongoing funding dedicated to vehicle replacement. The Legislature has on occasion provided one-time funding for the department to purchase vehicles. For example, the 2018-19 budget provided CDCR with \$17.5 million in one-time General Fund support to replace 338 vehicles that are used for transporting inmates to health care and other appointments. Historically, CDCR has also used some of the funding it has budgeted for major equipment purchases—currently set at \$8 million—to purchase vehicles, as well as redirected

funding originally intended for other purposes. In addition, when CDCR replaces a vehicle, the old vehicle is sold at auction, with revenue generated—typically in the low hundreds of thousands of dollars annually—used to offset the costs of future vehicle purchases. In total, CDCR spent roughly \$15 million per year on vehicle purchases between 2013-14 and 2017-18.

Governor's Proposal

The Governor's budget includes \$24 million General Fund and 4 positions in 2019-20 and ongoing to establish a 7-year schedule for critical fleet assets. CDCR developed a fleet replacement tool to track the age and condition of its fleet eligible for replacement per DGS' replacement thresholds. CDCR will redirect \$8 million from the Division of Adult Institutions to be combined with this request for a total of \$32 million.

LEGISLATIVE ANALYST'S OFFICE

The Legislative Analyst's Office (LAO) states that the proposal, while it anticipates reductions in resources spent on vehicle maintenance, repair, and fuel, and increase the resale value of the replaced vehicles, it does not account for any of the expected savings. In addition, the proposal increases CDCR's administrative budget to account for the requested vehicle replacement funding without requiring that they actually spent the \$32 million on vehicles. As such, CDCR may redirect this funding to other administrative purposes without any legislative oversight. If this funding is redirected, the costs to maintain the existing fleet would increase. As such, the LAO makes the following recommendations:

- **Require CDCR to Estimate Savings and Reduce Budget Accordingly.** We recommend that the Legislature direct CDCR to estimate the maintenance, repair, and fuel savings, as well as the increase in auction revenue from the sale of the replaced vehicles, that it indicates would be generated by implementing the proposed vehicle replacement program, and provide such estimates by April 1, 2019. After CDCR provides a reasonable savings estimate, we recommend the Legislature reduce its budget by this amount. This would allow the Legislature to consider the available savings in the context of its overall General Fund priorities.
- **Approve Proposed Funding but Restrict Its Use.** After CDCR is able to demonstrate that the proposal would result in savings as described above, we would recommend that the Legislature approve the requested \$32 million for vehicle replacement. However, we would recommend that the Legislature budget the funds in a separate appropriation to prevent them from being redirected for other purposes.

Staff Recommendation: Hold Open

ISSUE 2: PAROLE PROCESS OVERVIEW AND SUPPLEMENTAL REFORMS TO PAROLE CONSIDERATION

The California Department of Corrections and Rehabilitation (CDCR) will open this issue with an overview of the parole hearing process.

PANELISTS**Panel 1**

- California Department of Corrections and Rehabilitation, Board of Parole Hearings
- Department of Finance
- Legislative Analyst's Office

Panel 2

- Board of Parole Hearings
- Professor Heidi Rummel, USC Gould School of Law, Post-Conviction Justice Project
- Keith Wattley, UnCommon Law
- Michael Mendoza, Anti-Recidivism Coalition

BACKGROUND**Board of Parole Hearings**

The Board of Parole Hearings (BPH) within CDCR is currently composed of 15 commissioners. Along with deputy commissioners, they consider whether to grant parole to all persons sentenced to state prison under the state's indeterminate sentencing laws, as well as certain determinately sentenced inmates who qualify for parole suitability hearings. Under indeterminate sentencing, individuals receive a sentence range, such as 25-years-to-life. Under determinate sentencing, individuals receive fixed prison terms with specified release dates. BPH also determines (1) whether to impose any special conditions on individuals who are granted parole—such as requiring participation in certain rehabilitative programs—once they are in the community and (2) how long those who are denied parole must wait until their next parole hearing, which can range from 3 to 15 years. In addition, BPH advises the Governor on applications for clemency and approves transfers of foreign-born inmates to their native countries.

Parole hearings are supposed to determine whether an inmate is suitable for release or if he or she currently poses an unreasonable risk of danger to society. The hearing panel, which typically consists of one BPH commissioner and one deputy commissioner, considers many sources of information, including a risk assessment from a psychologist, statements from the inmate and victims, and records of the inmates' behavior while incarcerated. Research indicates that some

of the sources of information considered are better predictors of dangerousness than others. For example, risk assessments completed by psychologists are among the best predictors of dangerousness. While BPH regulations outline criteria that tend to indicate suitability for release (such as positive behavior while incarcerated) and unsuitability (such as an unstable social history), there is currently no prescribed framework that the panel is required to follow in making its decisions in granting parole.

Projected Increase in the Number of Parole Hearings

Several factors are contributing to the projected increase in the number of parole hearings.

- **SB 261** (Chapter 471, Statutes of 2015) requires BPH to conduct youth parole hearings for those sentenced to state prison who committed specified crimes when they were under 23 years of age. BPH is required to complete by July 1, 2017 all youth offender parole hearings for individuals who were sentenced to indeterminate life terms and by July 1, 2021, youth offenders sentenced to determinate terms, who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the bill.
- **AB 1308** (Chapter 675, Statutes of 2017) requires BPH to conduct youth parole hearings for those who committed specified crimes when they were 25 years of age or younger. BPH is required to complete, by January 1, 2020, all youth offender parole hearings for individuals who were sentenced to indeterminate life terms and by January 1, 2022, youth offenders sentenced to determinate terms, who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the bill. As a result, BPH estimates an increase of 1,800 hearings.
- ***In re Edwards*** (2018), decided by the Second Appellate District court as a result of a petition for writ of habeas corpus, held that CDCR regulations impermissibly circumscribe non-violent third strike offenders' eligibility for parole consideration under Prop 57. Prop 57's definition of "full term" specifically excludes alternative sentences such as Three Strikes but the court held that this does not mean that Three Strikes offenders are ineligible for relief under Prop 57 but that for third strike offenders, their "full term" must be calculated as if the Three Strikes law alternative sentencing scheme had not existed at the time of sentencing. As a result, BPH estimates an increase of 1,800-2,000 hearings
- **Propositions 9 and 89**: In 2016, the Ninth Circuit reversed and remanded a district court's decision in *In re Vicks* (2013) and held that Proposition 9 (Marsy's Law) and 89 (allows Governor to review and reverse paroles granted by BPH in cases involving murder convictions) "retrospectively increased punishments, in violation of the ex post facto

clause of the U.S. Constitution.” As a result, BPH estimates an increase of 1,200 hearings in 2019-20 and 1,500 hearings in 2020-21.

Attorney Fees

Pursuant to California Code of Regulations, Title 15, Section 2256, an attorney is provided at the state’s expense if the prisoner or parolee cannot afford to retain private counsel at a hearing. Many inmates cannot afford to hire an attorney to represent them in parole hearings. In these cases, BPH appoints and pays for their attorneys. BPH currently contracts with about 36 attorneys to represent inmates in parole hearings throughout the state, with each attorney handling roughly 150 cases per year on average. As shown in Figure 5, BPH currently pays attorneys a flat rate for completing a specific task in the parole hearing process. Depending on the nature of the case, an attorney may not ultimately complete all tasks. For example, inmates have the option to waive their right to a parole hearing for one to five years or to stipulate that they are unsuitable for parole for a minimum of three years. (Inmates do this for a variety of reasons, including potentially being released from prison earlier than if they went to a hearing but were denied parole and required to wait 15 years until their next hearing.) In this example, there would be no hearing and, thus, the attorney would not receive the \$175 payment. BPH estimates that on average, attorneys receive \$400 per case.

Figure 5
Board of Parole Hearings Attorney Pay Structure
As of February 1, 2019

Task	Payment
Appointment to a case	\$25
Review case information, document inmate disability needs, conduct legal research	50
Review inmate’s file	75
Interview inmate	75
Appear at parole hearing	175
Appear at full board meeting ^a	100
Prepare written submission for full board meeting	50

^aCases only go to full board meetings in rare circumstances, such as if there is disagreement among the hearing panel about whether or not to grant parole.

In recent years, BPH indicates that it has had trouble attracting and retaining competent attorneys and has had to reprimand or even discontinue appointing some attorneys for providing inadequate representation to their clients. According to BPH, this is because attorney pay has not kept up with the increasing amount of work that attorneys must do on each case—largely due to more requirements related to documenting inmates' disability accommodation needs. BPH also indicates that the current pay structure may discourage stipulations and waivers of parole hearings. This is because attorneys receive a relatively significant increase in compensation if a case proceeds to the hearing stage.

Governor's Proposal

The Governor's budget includes \$4.7 million General Fund and 12.5 positions in 2019-20, \$6.1 million General Fund and 12.5 positions in 2020-21, and \$1.9 million General Fund and 12.5 positions in 2021-22 and ongoing to complete workload related to a projected increase in parole hearings. Since 2011, BPH has scheduled between 4,000 and 5,300 parole hearings annually. Current projections indicate that BPH will need to schedule a total of 7,200 hearings in 2019-20 and 8,300 hearings in 2020-21.

The Governor's proposal includes the following provisions:

1. Expand BPH by 2 commissioners for a total of 17 commissioners. Under this proposal, one commissioner per week will be designated as a "floater" who will prepare for hearings and will be assigned as a third panel member but may be redirected to cover another hearing when needed.
2. Streamline the parole hearing process with a structured decision making framework. The proposed framework is evidence based and used in seven states and Canada. It purports to focus the decision maker's attention on specific factors that research has found to directly impact an inmate's risk of recidivism and reduce the time currently spent on less relevant factors which could decrease the amount of time needed for commissioners to prepare for the hearing and shorten the average length of hearings. Currently, BPH schedules 7 hearings per week, per panel at Level II/III prisons and 10 at Level III/IV prisons. With the streamlined process, BPH projects they can schedule 11 hearings per week at Level II/III prisons and 14 hearings at Level III/IV prisons.
3. Provide additional information technology support to enhance functionality to improve the hearing scheduling process which has been increasingly complex with new laws and regulations concerning parole eligibility dates.

In addition, BPH also requests adjusting the rates of attorneys who represent inmates at parole hearings. Attorney costs are currently funded at a flat rate fee of \$400 per hearing and the request seeks to increase the fee to \$750. This would result in an augmentation of \$2.5 million in 2019-20. The average reimbursement rate for a criminal court appointed attorney in counties is about \$792. According to BPH, the fee increase would create a more equitable compensation rate for attorney services as compared to other local jurisdictions. In addition, BPH is vulnerable to potential legal liabilities. A writ of habeas corpus was recently filed against BPH (*In re Darryl Poole*) alleging BPH's "restrictive allowance for compensation of counsel appointed to represent inmates at parole hearings is insufficient to assure him and other life inmates effective assistance of counsel."

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO makes the following recommendations:

Structured Decision Making Framework

- The Legislature should require BPH to provide key information about its proposal to implement a structured decision-making framework that guides parole decision makers through the process of weighing information about an inmate. Specifically, we recommend that BPH provide information on the development, usage, and implementation of the framework by April 1, 2019. BPH should also provide a prototype of the proposed framework for the Legislature to review. Pending receipt of the above information, we recommend that the Legislature withhold action on the Governor's proposal. The information to the Legislature should include responses to the following questions:
 1. What is the process for developing the framework? It is unclear how BPH will develop the decision-making framework. For example, it is unclear what sources of information BPH is using to develop it and when it is expected to be finished.
 2. How will the framework be used? It is unclear whether the framework would solely guide commissioners in considering whether to release an inmate or whether it will also assist in their decisions about (1) what conditions to impose on individuals who are released or (2) how long inmates who are not released must wait for their next hearing.
 3. How will the framework be implemented? While BPH indicates that the National Institute of Corrections will provide technical assistance in the implementation of the framework (including site visits from experts), the board has not provided a detailed implementation plan. For example, it is unclear what training will be provided to commissioners and deputy commissioners in how to use the framework or what

processes BPH will use to ensure it is ultimately applied consistently as intended.

4. How will the framework be evaluated? It is unclear on the extent to which the framework would be evaluated to ensure it is consistent with best-practices, as well as its impact on rates of inmate release and re-offense. In addition, it is uncertain whether BPH will periodically evaluate the framework in the future to ensure it remains consistent with evolving research and best practice on criminal risk factors.
- In addition, in order to facilitate effective legislative oversight, BPH should provide a prototype of the framework and detailed information about how it plans to evaluate the framework.

Compensation for Attorneys Appointed by BPH

New Pay Structure Appears Needed, but Proposal Lacks Key Details. We find that problems cited by BPH regarding the current attorney pay schedule could potentially result in serious consequences, particularly if inmates lack appropriate representation in parole hearings. First, to the extent that poor representation results in fewer inmates being granted parole or in inmates being given longer denial periods, inmates could spend more time in prison—at higher state cost—than otherwise. Second, to the extent that the current pay structure discourages stipulations and waivers, it could generate unnecessary hearings—an unnecessary use of state resources—and/or result in inmates having to wait longer until their next parole hearing than they would have if they had waived their right to a hearing or stipulated that they were unsuitable for parole.

- The Legislature should require the Administration to provide key information about the proposed changes to the attorney pay schedule by April 1, 2019. Pending receipt of this information, we recommend that the Legislature withhold action on the Governor's proposal. If the Administration is unable to provide this information, we recommend rejecting the proposal and directing the Administration to provide a revised proposal with adequate information as part of the 2020-21 budget process. The information to the Legislature should include answers to the following questions:
 1. ***What Is the Basis for the Proposed \$750 Payment?*** At the time of this analysis, BPH was unable to provide a workload study—or other form of adequate explanation—to justify the proposed \$750 per case for attorney pay. Without this information, the Legislature cannot assess whether the proposed \$750 per hearing is the appropriate amount to attract and retain high quality attorneys.

2. ***What Is the Structure of the New Pay Schedule?*** BPH has not provided the proposed pay structure. Accordingly, it is unclear whether the new schedule would appropriately incentivize attorneys to provide adequate representation to inmates.

3. ***What Changes to Attorney Recruitment, Training and Expectations Are Proposed?*** BPH has not provided specific details about the planned changes to attorney recruitment, training and expectations. Furthermore, it is unclear how BPH would identify and respond to attorneys who do not meet the new expectations. As such, it is unclear whether implementation of these changes will be effective, as well as whether the board will require additional resources to implement them.

Staff Recommendation: Hold Open

ISSUE 3: INMATE LITERACY PROGRAM

The California Department of Corrections and Rehabilitation (CDCR) will provide an overview of the proposal to enhance literacy programming in CDCR.

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Under current state law, CDCR is required to improve inmate literacy and educational attainment, specifically to focus on improving the reading ability to at least the 9th grade level. Research shows that education programs, when appropriately implemented, are a cost-effective method of reducing recidivism and it is often necessary for inmates to improve their literacy in order to be able to effectively participate in other rehabilitation programs while in prison.

The *2018-19 Budget Act* provided about \$154 million (mostly from the General Fund) to CDCR for various inmate academic education programs. Some of these programs include literacy education that is provided in different settings. For example, classroom-based literacy education consists of classes of up to 27 inmates who meet for roughly 16 hours a week. Under this program, an instructor can work with up to 54 inmates. CDCR also operates the Voluntary Education Program, which is designed to supplement classroom based education or to provide access to education when a classroom based option is not available. An instructor in this program can work with up to 120 inmate students—offering in-person support at least twice a week but with no hourly attendance requirements. In addition, CDCR provides technology based education such as computer software designed to help develop basic literacy. As of December 2018, the above academic education programs served about 26,000 inmate literacy students daily.

CDCR measures inmate literacy and educational attainment by administering the Test for Adult Basic Education and test scores indicate the grade level at which a person is able to read and is used to help prioritize placement in education programs. As of December 2018, about 53,000—or 47 percent—of inmates read below the 9th grade level. Given that the existing literacy programs support 26,000 inmates, there are likely tens of thousands of inmates reading below the 9th grade level who are not receiving literacy instruction. In addition, according to available data from CDCR, approximately 2/3 of the CDCR population do not possess a documented high school equivalency or diploma.

Governor's Proposal

The Governor's budget includes \$5.5 million General Fund and 35 positions in 2019-20 and \$5.4 million General Fund in 2020-21 and annually thereafter to establish and support a literacy mentor program across all CDCR adult institutions. This amount includes \$4.3 million to support 35 permanent academic instructors to create, maintain, and facilitate the program and \$1.1 million to compensate the inmates who participate in the program as mentors.

For the purpose of this proposal, literacy programs are defined as all programs leading to a high school equivalency or diploma which could include English as a Second Language programs, Adult Basic Education classes, library services, inmate tutoring programs, and certain innovative grant programs.

Participants and mentors would receive rehabilitation achievement credits as a result of their engagement. Specifically, inmate-mentors could earn up to six weeks of milestone credits during the required mentorship training and an additional 90 days of educational merit credits. The proposed pay rate for inmate-mentors is \$0.85 to \$1.00. Participants could earn approximately a couple week of rehabilitation achievement credits.

LEGISLATIVE ANALYST'S OFFICE

The Legislative Analyst's Office (LAO) analysis indicates that under the proposed program, students would only receive an average of 90 minutes of support from mentors per week which is far lower than the roughly 16 hours of instruction offered in the traditional classroom model. In addition, the LAO notes that the proposed funding does not account for the period of training and other concerns as reflected in the following recommendations:

- **Approve Proposed Program on a Pilot Basis.** Given that it is unclear how effective inmate-mentors would be at improving literacy and educational attainment, we recommend that the Legislature approve the proposed inmate literacy mentorship program as a three-year pilot—rather than as an ongoing program as proposed by the Governor. Specifically, we recommend that the Legislature approve \$700,000 in 2019-20, \$800,000 in 2020-21 and 2021-22, and five instructors on a three-year, limited-term basis. This would allow the Department to implement an inmate literacy mentorship pilot with up to 100 inmate mentors and 2,000 students across five different prisons. (We note that this level of resources would account for the time it takes to train inmate mentors before they are paid.)

We also recommend that the Legislature direct the Administration to select participating prisons that would reflect the larger system, particularly in regards to security levels and missions. In addition, we recommend that the Legislature require CDCR to report by January 10, 2022 on the effect that the program has on inmate students' TABE scores relative to similar inmates who are enrolled in traditional education programs, as well as

those who lack access to traditional educational programs. This would help the Legislature determine whether the program's effects on inmate literacy and educational attainment is large enough to justify funding the program on an ongoing basis in the future.

- **Remove Criminal Personality Therapy Requirement Unless Mentors Have Moderate to High Need.** Due to the potential negative impacts of mandating criminal personality therapy for inmate mentors, we recommend that the Legislature direct the Administration to require that inmate mentors who participate in the pilot complete criminal personality therapy only if they have a moderate or high need for the therapy.

Staff Recommendation: Hold Open

This agenda and other publications are available on the Assembly Budget Committee's website at: <https://abgt.assembly.ca.gov/sub5hearingagendas> and may be contacted at (916) 319-2099. This agenda was prepared by Jennifer Kim.